

**RI Department of Environmental Management
Office of Water Resources**

**Narragansett Bay and Watershed Restoration Bond
Fund Regulations**

RESPONSE TO COMMENTS

Introduction: The Rules and Regulations for the Narragansett Bay and Watershed Restoration Bond Fund were developed to guide the administration of \$8.5M in state bond funds that were approved as part of a \$70M environmental bond referendum in November of 2004. On October 11, 2005 the RI Department of Environmental Management (RIDEM) published a public notice announcing a public hearing on the draft Rules and Regulations for the Narragansett Bay and Watershed Restoration Bond Fund. The public hearing was held at 9:30 AM on November 10, 2005 in Conference Room 200C1 of the Office of Water Resources, RI Department of Environmental Management, 235 Promenade Street, Providence, RI. This document is a response to comments received during the thirty-day period leading up to the public hearing, at the public hearing and during the seven-day period following the hearing.

Response to Comments: The following Response is presented in the order in which the comments were received. Comments may have been edited and/or summarized and the response is in italicized text. Every attempt has been made to use the commenter's own words to the fullest extent possible. When other persons repeated a comment, those people are recognized prior to the response to the initial commenter.

Margherita Pryor, US Environmental Protection Agency – New England (written and spoken comments):

- The regulations appear to disallow non-structural activities including planning and development costs. (Jennifer Pereira, Woonasquatucket River Watershed Council; M. James Riordan, Fuss and O'Neill; Megan Higgins, Esq., RI Coastal Resources Management Council) *A definition of construction has been added to the regulations that includes both planning and design. Specifically, "Construction" will be defined as "the building, alteration, rehabilitation, improvement, or extension of a project, and the associated necessary planning, design and engineering."*
- The regulations should be accompanied by a guidance document that explains the use of and access to the available funds. *Subsequent to the promulgation of these regulations, it is the intention of the Department to provide guidance during the implementation of each sub-fund under the Narragansett Bay and Watershed Restoration Bond Fund (NBAWRBF).*
- Septic systems should not be included in the definition of nonpoint source pollution and thus not be eligible for NBAWRBF assistance. Septic systems should be funded through the Clean Water State Revolving Fund's (CWSRF) Community Septic System Loan Program (CSSLP). *The CSSLP program only covers the repair or replacement of failing septic systems from homes. Businesses, nonprofits or other similar nongovernmental entities have no analogous funding program. In order to address this need, the Department included septic systems in the definition of nonpoint source but prohibited the funding of septic systems that serve single-family residences (see Section 11.01.e).*
- The phrase "construction site" in the definition of nonpoint source pollution should be changed to "development and redevelopment activities". *The phrase "and other disturbed areas" has been added to the definition of nonpoint source pollution.*
- Replace the word "construction" in Sections 8.01 (b)(i) and 8.02 (b)(i) with "implementation" to be consistent with broader definition of "projects" and specifically including project planning, development, and oversight (and associated personnel costs)

as eligible activities. *See the definition of “construction” in the initial response. Also, see Section of 11.02(c) of the draft regulations.*

- Section 8.01(b)(ii) allows capital expenditures for equipment to enhance implementation of “best management practices”, a term not defined or introduced previously; in addition, this contradicts Section 11.01(f) which disallows the purchase of equipment for these purposes. *There is no contradiction between the two Sections. Section 8.01(b)(ii) allows for “the purchase of additional or upgraded equipment to enhance implementation of best management practices identified in Department approved local stormwater management program plans. Section 11.01(f) prohibits the “replacement of equipment to ...”. It was the Department’s intention to encourage local governmental units to further their efforts to treat stormwater pollution instead of having the NBAWRBF be viewed as a source of funding for the replacement of old equipment.*

Rather than inadvertently limit a recommended activity contained in a stormwater management program plan the term “best management practice” was left undefined but tied to the RIDEM approved document.

- Proposals to abate illicit point sources (Section 8.02(b)(ii)) should be carefully screened to avoid funding recipients who have deliberately discharged to a stormwater system. *Section 11.03 of the draft regulations is designed to address such a situation.*
- RIDEM should consider providing minimal forward funding to help nongovernmental organizations launch projects with initial expenditures they may not be able to cover. *NBAWRBF is a reimbursement program and monies will not be advanced. This is due in part because NBAWRBF are bond funds that carry fiduciary requirements usually not associated with funds from other sources (e.g. general fund monies).*
- In-kind match usually occurs as the project proceeds; given that a recipient is required to document match within 90 days of accepting the grant, RIDEM should clarify acceptable “proof” of matching funds. *This is a good suggestion and will be included in the guidance developed subsequent to the promulgation of these regulations.*

Thomas Ardito, Narragansett Bay Estuary Program (written and spoken comments)

- The draft regulation appear to limit or even exclude restoration activities which is contrary to the spirit and intent of the bond language approved by the Rhode Island voters. (Megan Higgins, Esq., RI Coastal Resources Management Council) *In developing the Rules and Regulations for the Narragansett Bay and Watershed Restoration Bond Fund RIDEM has adhered to the spirit and intent of the language contained in the wording of the environmental bond and the Department’s presentations during the capital budget process. The focus of the NBAWRBF, as proposed by RIDEM since 1999, is to provide a source of funds to implement water pollution abatement projects identified through the TMDL process that were too small in scope for Clean Water State Revolving Fund (CWSRF) assistance to be practical or the entities responsible for the projects were ineligible for funding under the CWSRF. The Riparian Buffer sub-fund specifically recognizes the water quality benefits associated with the protection and restoration of riparian areas.*

- A much larger proportion of the funding should be available for restoration generally; and that portion should be available for more than simply buffer work. *The ballot language did not establish a proportion of the funds between anti-pollution projects and restoration. Therefore, RIDEM proportioned the funds approximately as it was proposed through the capital budget process.*
- 50% match requirement (Section 8.00) is unduly burdensome for watershed councils and other non-governmental entities. Match should be at most 25%; and provision of in-kind services should be eligible as match. (Jennifer Pereira, Woonasquatucket River Watershed Council; Megan Higgins, Esq., RI Coastal Resources Management Council) *Throughout the capital budget process, the NBAWRBF was presented and approved as an up to 50% Reimbursement program.*

Section 10.01(f) of the draft regulations lists “in-kind services performed by the applicant or a third party that are directly related to the performance of the project” as an acceptable source of match.

- The application process (Section 10.00) should include a streamlined pre-application phase in order to reduce the burden on applicants as well as on the review team. The pre-application process should be designed to provide applicants feedback on fundable projects. The pre-application itself should be optional, but strongly encouraged to improve applicant’s chances of funding. *The Department has held pre-application workshops in the past and they have proven very effective. Such meetings will continue based upon need, however, the Department felt it unnecessary to include a pre-application workshop in the NBAWRBF regulations.*
- Section 10.01(c) seems to imply that permits must be in hand before applying – this is burdensome. Applicants should be required to simply demonstrate understanding of the permits that will be required. The regulations should state that bond funds are usable for permit application fees and for consulting fees to obtain permits. *The intent of Section 10.01(c) was not to require that applicants obtain all applicable permits prior to seeking NBAWRBF funding but to make available those permits on hand at the time of application.*

Permit application fees are considered as part of the design of a project thus are eligible for funding per Section 11.00 of the regulations.

- The requirement for the documentation confirming secured funding (Section 10.01(f)) will all but prevent many otherwise good projects from being approved. In many cases, applicants (governmental as well as non-governmental) write grants simultaneously for a project to several partners. Approval of the application should require the applicant simply to demonstrate an expectation of match; actual funding can then be contingent upon demonstration of commitment of match. (Jennifer Pereira, Woonasquatucket River Watershed Council) *While RIDEM is sympathetic to the difficulties of seeking funding from multiple sources, the Department is also responsible for seeing that public funds are expended in a proper and timely manner. There have been instances in the past where grantees have never been able to secure matching funds or those matching funds were insufficient and projects terminated prior to completion. The intent of this section is to have the applicant demonstrate a reasonable degree of certainty that the match*

requirement will be met through the grant period.

- Developmental technologies or new approaches to pollution control and restoration (Section 11.01(a)) should be eligible with full analysis and documentation of the results. *The Department believes that it was the intent of the bond to use state funds for the mitigation of water pollution and not to study the efficacy of experimental technologies (actual wording from the regulations). It should be noted that technologies or methodologies successfully employed elsewhere but not previously attempted in Rhode Island are eligible for NBAWRBF assistance.*
- Land acquisition (Section 11.01(d)) should be eligible where necessary to implement a project. *The draft regulations make a distinction between land acquisition as a project and as a cost. The acquisition of land for the purpose of conservation or preservation is considered a project and is not eligible for funding from the NBAWRBF. However, Section 11.02(a) allows for the “cash expenditures to purchase land not owned by the applicant at the time of application, which the land is essential to and directly related to the performance of the proposed project.”*
- Reasonable administrative and overhead costs (Section 11.02(c)) must be eligible expenses if municipal and non-governmental entities are to carry out meaningful water quality and restoration projects. (Jennifer Pereira, Woonasquatucket River Watershed Council) *The state budget requirements are clear that state bond funds must be used for capital projects and not extraneous personnel and administrative cost. Section 11.02(c) does allow for those cost directly related to the prosecution of the project. What the regulations limit are indirect personnel and administrative costs such as clerical support, monthly utility expenses, the purchase of office equipment, personnel costs associated with fund raising for the nongovernmental entity, etc. This Section has been amended to provide examples of eligible and ineligible administrative expenses.*
- The application review team (Section 12.01(b)) should be a broad group, certainly more than four members, with representation from the nongovernmental, municipal, state and federal sectors. (Richard Ribb, Narragansett Bay Estuary Program) *This section of the regulations states that four members at a minimum is the size of the review team and it permits the Director to expand the application review team should he/she see fit.*
- The review process and criteria (Section 12.01(c)) should be refined to better reflect the stated intent of the bond measure approved by the Rhode Island voters. Review criteria should consider the full range of potential environmental and economic benefits of watershed restoration. DEM should test the criteria using a wide range of sample projects, to ensure that they do not create a bias in the selection process against certain types of projects. *Following the promulgation of the NBAWRBF regulations RIDEM will develop the rating criteria for the individual sub-funds. As part of the criteria development process, various hypothetical projects will be tested in order to prevent any bias against a type of eligible project(s).*
- The issue of reporting is not addressed in the proposed regs. Applicants should be required to briefly report on progress at reasonable intervals (say quarterly or semiannually); submit brief annual reports; and on completion of the project, develop a detailed project report to a standardized format. Photos suitable for publication should be required where appropriate. *Given the variability of the projects that could be funded, the*

Department felt that the issue of reporting is better addressed in the individual grant agreements rather than in the NBAWRBF regulations. RIDEM will try to incorporate the requirements suggested by the commenter into the grant agreements.

Jennifer Pereira, Woonasquatucket River Watershed Council (written) [Note: Ms. Pereira's comments were read into the record by Jane Sherman]

- The Woonasquatucket River ranges from the pristine in the northern reaches to impaired in its urbanized lower segments. How will the Department determine the value of a particular resource (Section 12.01(c)(2)? We are concerned that criteria placing the highest value on pristine sites will preclude projects that are critically important to the health of our rivers and bays, including restoration of degraded wetland and riparian areas important to urban environmental health and the restoration of anadromous fish runs. *With respect to how DEM will determine the value of the resources to be protected or restored, points are awarded in the selection criteria based on the projects watershed location, water quality protection, water quality restoration, as well as practical considerations, and readiness to proceed. Potential projects on the main stem of rivers are eligible by the bond fund regulations and are awarded points in the selection criteria based upon the merits of the project.*

Michele Komar, Greenwich Bay Watershed Group (spoken)

- Which areas of the state are eligible for funding under these regulations? I think that it is a little confusing because it says Narragansett Bay and watershed, or waters of the State. If you qualify it with a map that would be helpful. *Section 1 of the regulations closes with the phrases "... activities benefiting Narragansett Bay and state watersheds." This is the actual wording from the state law creating the NBAWRBF. RIDEM believes from this language that the entire state is included in the fund.*
- What are the qualifications for nonprofit entities to be eligible for funding under Section 8.02 of the regulations? Can kitchen table groups without formal recognition (i.e. 501(c)(3) status), but have secured other funding grants, apply? *The use of state bond monies to fund water pollution abatement projects dictates that grant recipients have both the financial and managerial capacity to implement the project. In order to receive reimbursements grant recipients must have a social security number or of federal employer identification number.*
- Will Wetlands and other RIDEM permit fees be waived for NBAWRBF funded projects? *The regulations have no provision to waive permit fees. Fees are governed by the applicable permit program regulations.*

M. James Riordan, Fuss and O'Neill (written and spoken)

- Much illicit discharge detection [Sections 8.01(b)(iii) and 8.02(b)(ii)] involves improper wastewater connections. If illicit detection work is related to individual sewage disposal system (ISDS) bypasses and creeping failures, such as in Portsmouth/Island Park, will it be excluded under Section 11.01(e)? *In accordance with Sections 8.01(b)(iii) and 8.02(b)(ii), an illicit discharge project is eligible, assuming the project is in compliance with Section 11.03 of the regulations, as long as it does not involve the repair or replacement of an ISDS serving a single-family dwelling.*
- It is recognized that residential ISDS are excluded from funding, but did you intend to exclude innovative and alternative systems and cluster systems such as were installed in

Chepachet? What if cluster/community systems include both residential and commercial properties? Also, can ISDS work be used as match? *Any type of ISDS that serves a single-family residence is ineligible for NBAWRBF funding. A governmental entity would have to own and maintain a cluster/community system if it were to be funded by the NBAWRBF. Provided the ownership and maintenance arrangements are satisfactory to the Department, a NBAWRBF grant would be based on a proportion between eligible and ineligible components in a cluster system that served both commercial and residential buildings. ISDS work involving single-family residences would not be an allowable source of match for NBAWRBF grants.*

- The definition of “pollution” is unclear as to whether or not it includes hydromodification as defined in the Rhode Island Coastal Nonpoint Pollution Control Program (i.e., CZARA, section 6217 program). If hydromodification is not included, projects such as the Kickemuit River Fish Ladder and Still House Cove Salt Marsh Restoration might not be eligible for funding. Also, this definition is unclear whether secondary impacts from urbanization, such as pollution from wildlife sources in urban settings, would be eligible strictly speaking they are neither “manmade” nor “man-induced”. ”. (Roland Gauvin, Trout Unlimited, Northern Rhode Island Chapter; Frank Geary, Blackstone River Watershed Council) *Throughout the capital budget process, the Department has stated that it intended NBAWRBF funds to be used for water quality restoration projects. For the purposes of these regulations, the Department takes a more traditional interpretation of the word “pollution” that focuses on the physical/chemical impacts to water quality rather than the more broad interpretation recently employed by various federal programs which includes impacts to uses.*

It can be argued that the concentration of wildlife, and the resultant water quality impacts, through feeding or habitat loss due to development is a “man-induced” phenomenon. Furthermore, under the definition of nonpoint source pollution, water quality impacts due to wildlife can be classified under “other diffuse sources”.

Donald Pryor (written)

- The rules and regulations should allow, and make explicitly clear that they allow, design costs to be included, at least as part of the match. Poorly designed projects will be of little benefit. Follow-up evaluation of performance should also be allowed and encouraged, at least as part of the match. *See above for the definition of construction.*

Given the variability of the projects that could be funded RIDEM has decided to make follow-up performance evaluations as a grant condition contained in the individual grant agreements.

- The rules and regulations should make it clear that expected water quality improvements will be a prime evaluation criterion. DEM, in a presentation to the Rivers Council, described evaluation criteria for the Riparian Buffer restoration Fund that appeared to emphasize headwaters protection over restoration work to improve polluted waters. While both are important, improvements should be emphasized. *The Department intends to emphasize water quality improvement when it develops the rating criteria under section 12.01.c. for each sub-fund.*

The selection criteria for the riparian bond sub-fund provide points to restore riparian buffers for water quality protection and restoration. There is good science to support the riparian restoration of low order streams to improving water quality conditions down

stream.

The Department wishes to thank all parties for their thoughtful and insightful comments. The Department has decided that neither individually, nor collectively, the changes to the draft Narragansett Bay and Watershed Restoration Bond Fund regulations made as a result of the public participation process necessitates placing the draft regulations out to public notice for a second time. The Department will proceed to file the regulations with the Secretary of State's Office where, twenty days after the filing date, they will become final.